RCSL NEWSLETTER

INTERNATIONAL SOCIOLOGICAL ASSOCIATION
RESEARCH COMMITTEE ON SOCIOLOGY OF LAW

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Unthinking Eurocentricism

This issue of the newsletter includes an article by David Nelken on the successful conference organised at the Oñati IISL last summer. Nelken uses this occasion to touch upon some of the intellectual issues which were raised during the course of this conference; issues which according to him can set the agenda of a future European sociology of law. We republish this article with the permission of the SLSA Newsletter, where it first appeared in October last year, hoping that it helps the RCSL to re-think its future direction. Although Nelken is limiting the scope of his discussion to the European sociology of law, he is clearly concerned with a notion of socio-legal research which accommodates the global diversity which we experience today.

Nelken's discussion on how a European sociology of law should place itself in a new global context without falling prey to "Orientalism" or "Occidentalism" provides us with food for thought. We can broaden Nelken's concerns and read his reflections against the background of the challenges facing the RCSL when promoting the sociology of law worldwide. Today, the RCSL has members not only from Europe and North America, but also from central and South Americas, Australia, Japan, China, India, Iran, Israel Turkey, Egypt and South Africa to name a few countries.

The national and geographical diversity which we find among our members is, however, neither reflected in the composition of the RCSL Executive Board, nor in the RCSL's various activities and objectives as an *international* association of the sociologists of law. The Executive Board of the RCSL needs to remedy this shortcoming before it is too late and before it is turned into yet another occidental network which is organised in oblivion of the concerns of our members from other parts of the world.

Most alarming is the possibility that "we" (ie. those of us who live in Western Europe and North America) might think that we have nothing to learn from our colleagues in South America, Africa or Asia.

The RCSL's Executive Board needs to re-examine its role as an *international* network and re-think ways of achieving its main objective, which is to support the development of socio-legal research *worldwide*. The RCSL can no longer present itself as an international association if it continues to be represented by, and represent the interest of, a small section of the socio-legal community which is based in western countries.

This issue also contains an article translated into English by Alex Ziegert. This article was written by three Swedish researchers in memoriam of Per Stjernquist, who died recently. Stjernquist was the founder of the sociology of law in Sweden and one of the pioneers of the subject in Scandinavia. He belonged to the same generation as Vilhelm Aubert, Renato Trevers, Adam Podgórecki and Jan Carbonnier. Although he never felt the need to seek international recognition, his research and writings, which were broad in scope and not limited to legal issues, left their marks on the development of the sociology of law within and without Scandinavia.

In this issue we also publish an article by Michael King on Niklas Luhmann's systems theory and a short and informative piece by John Griffiths about the development of the sociology of law in the Netherlands.

Reza Banakar
The RCSL Secretary

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Donations

The Research Committee is grateful to Athanassios Papachristou and Fiona Cownie for making donations to the General Support Fund and to the Treves Grant.

Call for Applications for the Position of the Academic Director of the Oñati Institute for the Sociology of Law (IISL)

The International Institute for the Sociology of Law, Oñati, Basque Country, Spain (www.iisj.es) invites applications for the position of Academic Director.

IISL has a rotating directorship. Once every two years a new Academic Director is appointed with a view to maintaining and enhancing the Institute's unique multicultural atmosphere. The Institute is renowned for its global profile and the RCSL adopts this recognition of the diversity of legal cultures as a guideline in search of candidates for the next directorship, the term of which will begin on 1 September 2007.

Some familiarity with the IISL and knowledge of more than one of the Institute's languages (in particular Spanish and English) is desirable. The job carries a Spanish visiting professor's salary (plus fringe benefits like travel allowances and free accommodation).

Socio-legal scholars interested in this challenging task are invited to submit formal applications or letters of intent to the RCSL President. The RCSL Board will select and propose one or more of the candidates to the Oñati IISL Board, which will confirm the appointment of the next Director in September 2006. Informal inquiries may be made to Professor Joxerramon Bengoetxea (email: joxerramon@iisj.es).

Towards a European Sociology of Law

Can there be such a thing as a European sociology of law? What does, or what should, this involve? What problems does it face? Is it too early to try and develop such a shared enterprise? Or is it too late? We could, on the one hand, say that it is *too early* because of the difficulty of overcoming profound differences in language, culture and academic traditions which are inextricably intertwined with modes of thinking about, experiencing and studying law. Such contrasting 'legal epistemes', it is claimed, cannot communicate. (It is enough to think of the enormous variation in the importance different European jurisdictions give to the value of 'empirical' information about the operations of law). On the other hand we could also make the opposite argument. It is now *too late*, because, after the advent of globalisation, it would be a retrograde step to want to limit our research to a 'place' identified as Europe. Europe and European Law are formed and reformed as part of the ever-increasing flows of people and ideas in the larger world (albeit in different roles in the first, second and third world). The search for a distinct European identity also has to come to terms with the variety of groups and populations who already make up the European Union (and Turkey has real prospects of becoming a member soon). Many of Europe's citizens belong to diasporas stretching well beyond Europe's boundaries and are bearers of traditions that are as old as or may even pre-date Europe.

But perhaps these questions are exactly the shifting terrain on which we have to try and construct a European sociology of law? Certainly we could dispose of the issue by arguing that the truths of science know no boundaries. But are we so convinced that the sort of sociology of law we engage in really is universally relevant? And why then have national associations? Why is it that sociology, criminology and social policy all have their own European associations and journals? Arguably law is, and needs to be, even more local or even parochial than these intellectual disciplines, and in any case there is a specific body of European Union Law to contend with.

The Oñati Conference on European Ways of Law

These thoughts are stimulated by having just returned from the first ever European sociology of law conference held at the Oñati Institute in the Basque country, Spain from 4-8 July this year. The then director Volkmar Gessner had been planning for some time to try and hold a conference at Oñati. But I played a modest part in planning this event because I suggested to him (while we taught together on the Oñati Masters course the previous year) that a promising theme might be 'European ways of law'. This idea came to me after writing a review of Bob Kagan's book dealing what he calls 'the American way of law'. In this book, and in other writings, Kagan strongly criticises the excesses of American adversarial justice, and warns Europeans not to go down the same path. But the contrasting picture he draws of law in European Welfare States, which he sees as guided by expert bureaucratic policy-making, seems to me both idealised and over-homogenised. After having lived for the past 15 years with the unending culture shock of Italian law (as well as having some experience of differences in other European countries) it seemed to me to be a moot question whether there is one 'European way of law'.

In this report I want to say something about the proceedings at the Oñati conference that may be especially useful for those who were not able to make it. Given the limitations of space, however, I shall only be able to give a general overview, together with a

brief account of a session on European versus American ways of law that I organised, as well as short summaries of the plenaries. Many of the papers were made available on the Oñati website (www.iisj.es/), and a selection will be forthcoming in an Oñati publication. In addition, however, I would like to use the conference as an opportunity for addressing the larger intellectual and organisational challenges that I raised at the outset, and this will hopefully be of interest even for those who did attend.

From all accounts the conference was much enjoyed. Its success should be attributed to Volkmar Gessner, himself a pioneer in the study of European sociology of law (Gessner et. al. 1996), and the characteristic efficiency and lightness of touch shown by the Oñati administrative staff and especially Malen Gordoa Mendizabal. Tasty conference meals and musical performances added to the pleasure of the event. It was difficult to remember that this was not only the first conference on this theme to be held at Oñati but also its first ever full-scale conference as such. Oñati usually averages around 30 for the workshops it hold throughout the year. This time 180 people from 29 different countries took part.

Since it was open to all, the conference offers some sort of idea, however rough, of who is interested in European sociology of law and what they might take this to mean. Countries from both Western and Eastern Europe were well represented. There were especially large contingents not only from Spain, as would be expected, but also from the UK, Holland, Italy and Sweden. The French presence was likely under-strength because the RCSL was holding an important conference in Paris the following week. German sociology of law, once one of the strongest in Europe, has been sadly reduced by the lack of government support for the discipline. Countries outside Europe with a presence at the conference (a sixth of all participants) included not only scholars from English-speaking countries such as the US, Canada, and Australia, but also Asia (China and South Korea) as well as a range of Southern American countries such as Venezuela, Argentina and Brazil.

Most presenters of papers did not stick rigidly to the conference theme (when do they ever?) and few of the papers expressly addressed what is or could be meant by European way or ways of law. But it is fair to say that the issue was almost always implicit in what was being discussed. The sessions most relevant to the theme dealt with the topics of EU Community law, Constitutionalism and Human Rights, Law and Legality in the new Europe, the transformation of European law, Law and Social Change in Europe, European legal space, Europe and Gender, and Immigration policy. Some papers highlighted comparative issues such as Mediation in Italy and the UK, or EU environmental policy as applied in Holland. But other presentations dealt with more general questions such as Law and Popular Culture, Restitutive Justice, Post-Colonial Justice or Law and Norms (the focus of the Swedish contingent) which were not necessarily tied to the theme of the conference. It is hard to say how far the work presented was representative of what is going on in the community of sociology of law researchers, But what was clear was that there were a lot of people out there doing interesting work who appreciated the chance to find out what was going on elsewhere.

In terms of the disciplines being used speakers drew mainly on law (conceived broadly so as to include socio-legal studies) as well as history, and legal philosophy. There was also some use of concepts drown from sociology and social policy. As compared to US Law and Society Association meetings there was probably less reference to political science, anthropology, psychology, and economics, and somewhat less interest in empirical methods or questions of methodology more generally. But, at the same time, there was also not that much evidence of (self-consciously) critical and cultural studies of law. It would be a pity if European Sociology of law, if and when it constitutes itself, were to reproduce the current somewhat artificial split between the recently founded mainstream *European Society for Criminology* and the more critical but somewhat marginalized *European Group for the Study of Deviance and Social Control*.

Nonetheless, there was no shortage of controversial issues to debate in the conference. In an opening session explicitly devoted to the conference theme, Bob Kagan illustrated six ways in which he saw American law continuing to stand apart from European ways of law (the place of federal courts, extent of market freedom, attitudes to crime, the welfare state etc.) He claimed that ‘adversarial legalism’ was an American phenomenon, and insisted that, despite pressures to convergence which meant that its influence was spreading, it was always likely to remain much more marked there than in Europe.

Wolf Heyderbrand, in his reply, argued that, if a more historical view of changes in law was taken, this would reveal a move worldwide not towards costly and often inefficient adversarial justice but to ‘informal proceduralism’ and ‘soft law’. Both in the US and elsewhere the trends to watch were those of deinstitutionalisation, delegalisation and deformalisation, all of which tended to work to the benefit of powerful agents. If Heyderbrand diminished the importance of place, Antoine Garapon, the other respondent, sought to heighten it. In seeking to explain the specificities of French legal culture as compared to the Anglo – American legal episteme he emphasised the need to interpret how law is experienced by those within a given society explaining that the first step is to recognise the importance of linguistic differences. He suggested for example that, in France, it is difficult to think of law as being moved by agents or social movements, that the ‘private’ or ‘economic interest ‘ is suspect in the realm of law, and that, to a remarkable extent, ‘law is an ideal that never happens’.

The three plenary speeches also made distinctive contributions to the conference theme. Although it is hard to imagine that it could have been deliberately planned this way, the first plenary turned out to deal with the past of sociological studies of law, the second with the present, while the final plenary looked to the future. Roger Cotterrell, in a characteristically lucid and learned presentation, looked back to what Ehrlich, Weber and Durkheim had to say, or might have to say now, about the socio-legal dilemmas facing Europe. Ehrlich, of course, offers us important insights into legal and cultural pluralism; Weber wrote about the problem of leadership as something that cannot be reduced to bureaucracy; Durkheim charted the possibility of finding shared values even under conditions of modern individualism. Needless to say, any 'solutions' these great thinkers proposed are perhaps less useful than the recognition that they too wrestled with problems that are recognisably similar to our own.

The second plenary was given by Richard Munch, a leading German social theorist. Munch sought to explain how similarities could be found between the type of sociological thinking characteristic of different countries and the way they chose to respond to problems of socio-legal regulation. Taking as his examples the USA, UK, France and Germany, he wove an intricate argument concerning 'representative' thinkers from each country (Giddens for the UK, Foucault for France, etc.) whose accounts of social action could be seen to be mirrored in distinctive national 'styles' in the implementation of clean air legislation. The conference proceedings ended with a hard hitting and inspirational presentation by Boaventura de Sousa Santos, on law, colonization and post-colonization. He described a Europe which had produced great achievements but also much bloodshed. Looked at today from the perspective of the poorer countries of 'the South', he argued, Europe and USA were on the same side in blocking their progress. He argued for the need to learn from 'the South' and sought to show the possibility of a 'counter-hegemonic' use of ideas such as democracy rights and law.

Where next? An Intellectual and Organizational agenda

This conference, valuable as it was, hardly scratched the surface of the intellectual issues that may be seen as the agenda of a future European sociology of law. Because Europe is both a place to study and a place that studies and helps to spread law (with or in competition with Americans or others) such an endeavour would need to encompass Law 'in Europe', 'for Europe', and 'by Europe'. More specifically, research is needed in order to:

1. Understand the internal differences within Europe and the way these are changing.
2. Consider the role of law in the process by which European polities are actually coming together, or should come together.
3. Clarify the similarities and differences between Europe, the US, the Islamic world, Asia etc. with regard to legal epistemes, legal cultures and legal traditions.
4. Examine the role of European law in the wider/ globalising world and, not least,
5. Consider the different ways of studying law sociologically in Europe and the way this reflexively helps shapes law itself.

For many of these tasks we can find a clear and increasingly evident overlap with comparative law, legal history and legal philosophy. But it will also be necessary to look further afield to other social sciences and cultural studies to keep up with debates over relevant problems of comparative method and how to represent 'other' realities without falling into the trap of 'Orientalism' or 'Occidentalism'. It was striking, for example, how much Garapon, in his intervention at the conference, struggled to make himself understood as he tried to explain to scholars trained in Anglo-American ways of thinking why 'law' in continental Europe is precisely not considered a matter suitable for negotiation and mediation.

Of all the items on this agenda therefore it is probably the first that is the most urgent, given the way the European Union bureaucracies and Court decisions tend (often deliberately) to run ahead of ideas and practices of the groups that produce the 'living law' within each society. Certainly we already know something about the existence of differences in the use and meaning of law within and between the nation states and groups that make up the European Union. Whether they concern the role of judges and lawyers, the use of courts, patterns of delay, contrasts in penal 'sensibilities', or the meanings of underlying legal and social concepts, differences in 'legal culture' (Nelken, 2006a) are at least as remarkable as the similarities that we might expect to find in societies at roughly similar levels of political and economic development. Nor do these differences lack potential practical and policy implications. How can it be that in Italy most young people who commit murder do not even get a criminal conviction? How far, if at all, does this depend on special social conditions that only prevail in Italy (Nelken, 2006b)? But whilst context is important it may not always be all-important. We must be careful not to assume that given institutions practices and ideas necessarily emerged in the society in which they are currently situated. Beccaria's ideas about punishment found much readier audiences abroad than in what was to become Italy.

From a sociological point of view, comparative law scholars have so far tended to focus too much on private law matters and on the differences or similarities between common law and civil law traditions. Together with social scientists they have also done important work on the differences between the West and the East as the ex-communist countries

seek to re-model their law so as to be admitted to the EU 'club' or become more like the West (but this could change). By contrast, fewer scholars have explored differences going from the North to the South of Europe. It would be an interesting project for example to ask why Scandinavian countries find the idea of 'law as fact' so congenial whereas countries in Southern Europe tend to treat the law as 'counter-factual'. Such a comparison might provide real insight into our field's fundamental question of how law and society interrelate as well as help each side learn something about itself as well as the other.

It will suffice here to provide a few illustrations of the type of enquiries that could be (or are being) pursued under the other headings. Students of EU law examine the way the same law may be applied differently in different places and predict trends towards convergence or to less predictable 'irritation' as legal and social systems try to communicate. But the problem of how to define 'success', and who gets to define it, remains open. There are fundamental differences in expectations as to what we should want from European law. If Habermas asks us to move to a European citizenship which uses law as a way of keeping ethnicity in its proper place, the Basque Minister of Justice who introduced the Oñati conference explained that, from his political perspective with its fear of threats to the identity of minorities, he hoped for a Europe of 'all the peoples'.

As interesting is the way that all-penetrating flows of communication now transform the processes of imposition, imitation or resistance that lead to socio-legal change. Europe is thus just another 'glocal' site for what Appudurai has called 'ideoscapes' (Appadurai, 1991). Legal practices and ideas reproduce themselves in a space of 'intercultural legality' that is increasingly shaped by awareness of other ways of doing things rather than by conditions 'at home'. Rather than taking any existing society as a model, what counts more is simply the desire to be 'normal'. Once relative statistics of prison rates in Europe began to be published, for example, a self-conscious move to the 'norm', led policy-makers in Finland to set out to reduce the number of people incarcerated while the Dutch felt entitled to go the other way.

But European law also exists through its success in expanding outside its own space. How much is the drive to harmonisation driven by the need to compete abroad? Is there a perverse connection between 'fortress Europe' and the need for cheap labour both abroad and at home? Certainly, American approaches to criminal and civil justice exert great influence worldwide. Lawyers and economists who travel abroad with their 'global prescriptions' (Dezalay and Garth, 2002), and foreign students who study in American Universities (or European ones) are both important vectors of change. 'Imperial law', as it has been called, accompanies the current brutal stage of economic globalisation. And there is something disturbing about spreading the 'rule of law' at a time of 'social acceleration' means that powerful business interests neither need it nor need to respect it (Scheuerman, 2004). On the other hand, when Anglo-American business-friendly law and European Continental codified systems engage in competition it is not always the former who win out. European personnel and ideas are heavily involved in transnational organisations such as the European court of Human rights as well as in a variety of non-governmental organisations.

There is, finally, the role of scholarship itself in all these international exchanges. Lawyers often seem to be getting there first well ahead of academia. But at least academics can afford to be more reflective. They may have most to offer by questioning the 'taken for granted' and showing the roots of difference. Scholars researching in ostensibly 'pragmatic' societies can do more than keep asking obsessively whether the law is 'working' (The American philosopher Morganbesser may have been right in his claim that 'pragmatism works in theory but not in practice'!) And scholars who live in more idealist cultures could do more than keep reminding their listeners of the importance of 'values'. But there is a limit of course even to our reflexivity. Can there be a culture-free concept of legal culture? Does this matter?

Keeping our feet on the ground, if we are to carry forward a programme of teaching and research on these questions we probably also need to find a suitable organizational form and forum. Weber (not himself a great success as a politician) once said famously that 'politics is a slow boring of hard boards'. In our case it seems to be more a matter of breathing new life into academic Boards. For example, it is easy to miss the way the organisational and intellectual challenges of building a European sociology of law are connected. A major (and sought for) achievement of the Oñati meeting was the way it reached out to young staff and postgraduates. By contrast, many meetings in Europe (both for better as well as for worse) tend to involve academic 'schools' where most importance is given to the leading figures and younger scholars sometimes do little more than make up the entourage. Competition between the leading scholars, as well as political differences, can have serious effects on the development of intellectual community and constructive debate.

So, in these terms, it is already a matter of significance that the Oñati conference saw relatively few 'leading figures' and hence made more room for those starting out. No doubt this reflected the wide range of contacts the Institute has made through its programmes of teaching, workshops, residencies and library facilities. By contrast the usual run of meetings organised by the Research Committee of Sociology of Law has tended to place stress on cross-national research collaboration that necessarily tends to privilege established scholars (as does much of the Law and Society Association's outreach with the exception of the graduate workshops). Realistically,

though, European sociology of law absolutely must also involve established scholars so that they can offer leadership, and share their experience and contacts (in return for a modicum of ego-massaging).

How should things be taken further? We cannot leave the development of European sociology of law only to Oñati. Help from other institutions and organisations (some of which may have yet to be invented) is required. The Oñati institute is a quite remarkable institution. Situated in a small town an hour from the nearest airport, in a part of Spain with a strong separate political identity and a highly distinctive language, it has nonetheless served as a power house of international sociology of law. The continuing political commitment the Basque authorities to our field is fortunately not in question. But the institute has a global rather than specifically European remit. The next conference being considered for two years time (which I proposed once it became clear that there was insufficient support for holding another European one) is likely to deal with 'Latin American ways of law'. In any case, running conferences in Oñati puts a large strain on the staff (and the town's restaurants and hotels might also have some problems in absorbing larger numbers of conference-goers). So, if not Oñati, who is to take up the cause? It would certainly be a pity to lose the momentum this conference has created.

The USA Law and Society Association is the role model for a successful organisation in our field and it is at present actively involved in efforts to become more international. But if the focus is to be on Europe it would make more sense to have a Europe-based organisation and conference site(s), though one open to all-comers, as at Oñati. Another obvious possibility is the Research Committee on the Sociology of Law. It was after all, under their aegis, that Oñati itself was (re)founded and is still run. Some of its 'working groups' – for example on family law or the legal profession-have certainly been successful in bringing people together in comparative enquiries, and from time to time conferences have been held, sometimes in conjunction with the Law and Society Association. Yet its remit as the sociology of law section of the International Sociological Association means that it too has a global rather than a specifically European role. In also suffers from a lack of resources which means that it has mainly served the needs of well funded established researchers. Although it should have a role in any further developments, it would be asking too much to expect the RCSL to construct a future for European sociology of law unaided.

In the related area of criminology the founding of the European Society of Criminology some years ago stemmed simply from the initiative of a small a group of people from various European countries. Matters have since gone well. Conferences are well attended and shift from country to country. The Society has been particularly successful in attracting scholars from Eastern Europe and also has a high level journal. Something similar could perhaps be tried for sociology of law. But I think probably the most viable way forward at present is rather to try to organise some sort of federation of willing national associations who would each take it in turn (every few years) to host an annual European-focused conference. An informal meeting was organised at Oñati to discuss this possibility and the representatives of different national associations there were very positive. But it is clearly something that needs to be aired more generally.

Many of the national organisations, including the UK's SLSA, are thriving, and already look beyond their own borders. But having to think every few years about how best to host the range of languages, cultures and concerns that make up Europe would be quite a new challenge. (Other Regional federations could do the same) There is also more that the more dynamic Universities and Research Institutes could be doing. Some time ago I wrote to a Director of the European University Institute in Florence pointing out that, since the departure of Gunther Teubner, the Law department did not seem to have given much attention to teaching and researching the sociology of law. In this way, I suggested, it mirrored the error of the EU itself which focussed too much on the creation of law and too little on the reception it would receive. To my surprise he wrote back saying he agreed with me! (though, as far as I know, nothing has yet been done about changing things).

It would of course be easier for us too to do nothing. And this is not exactly a utopian moment. The Oñati conference itself was sandwiched between, on the one hand, the news of what seemed like the definitive rejection of the European constitution in leading European countries, and the shock of the London bombings, a brutal message sent to a country of Europe to withdraw its troops from another part of the world. At the same time there are daily reports of people dying (and not only metaphorically) to get in to fortress Europe. Yet, without being over-ambitious, all this could be said to show that sociologists of law do have something to offer and a voice that needs to be heard. Law in Europe and in the world must aim to be more than social engineering and seek to serve ideals such as democracy, equality, tolerance and human rights. But it is ever more difficult to produce intercultural understanding of what is or could be meant by such values, and we cannot afford to mistake fine-sounding intentions for actual achievement. Could a European sociology of law make a special contribution to this goal? Comments are welcome!

David Nelken

The book of the conference, edited by Volkmar Gessner and David Nelken, is at an advanced stage of preparation.

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Second Call for Nominations for the RCSL Adam Podgórecki Prize 2006

The *RCSL Adam Podgórecki Prize 2006* is awarded for outstanding scholarship of a socio-legal researcher at an earlier stage of his or her career (see note on the *RCSL Adam Podgórecki Prize 2006* in the last RCSL Newsletter 2005).

The members of the Prize Committee are André-Jean Arnaud, Erhard Blankenburg, Sandra Burman, Masayuki Murayama and Alex Ziegert (Chair). We urgently call on all members of the Research Committee and socio-legal researchers in the wider community to nominate emerging outstanding socio-legal scholars, or, as the case may be, themselves to the Prize Committee until April 30, 2006.

Please send all nominations to the Chair of the Prize Committee (alexz@law.usyd.edu.au) or the Secretary of RCSL (R.Banakar@westminster.ac.uk)

Alex Ziegert,
Sydney

Berlin 2007: RCSL to co-sponsor a major international socio-legal conference

The Research Committee, the Law and Society Association (LSA) and four other national socio-legal studies organizations will sponsor a joint international socio-legal studies conference at Humboldt University in Berlin from July 25 to July 28, 2007. The Berlin meeting is aimed at socio-legal scholars from all over the world. It will identify common issues, take account of comparative work, foster studies of transnational phenomena, and promote future international cooperation.

The 2007 conference is latest in a series of joint annual meetings of RCSL and LSA. Other sponsors of Berlin 2007 are the Socio-Legal Studies Association of the UK (SLSA), the Japanese Association of Sociology of Law (JASL), the *Vereinigung fur Rechtssoziologie (VfR)*, and the Sociology of Law Section of the German Sociological Association. In addition, a group of scholars drawn from Humboldt and other institutions in and around Berlin serve as the Local Organizing Committee.

This will be a historic meeting. For the first time, LSA and RCSL have joined with associations from around the world to sponsor a truly international and collaborative conference. The international Program Committee (PC 2007) is co-chaired by Anne Boigeol (France) and David M. Trubek (USA) and includes representatives of the sponsoring organizations and other scholars from eleven countries. The Program Committee is responsible for selecting the theme, commissioning all special events, developing panels and roundtables, and organizing submissions. An International Planning Committee (IPC), made up of representatives from the six sponsoring organizations, serves as a liaison between PC 2007 and the sponsors.

The conference will be open to individual scholars and standing research networks including RCSL Working Groups and LSA Collaborative Research Networks. In connection with Berlin 2007, LSA has established the Program on International Research Collaboration (PIRC) to support new multi-national research networks. These International Research Collaboratives will convene this summer at the 2006 LSA meeting in Baltimore, Maryland and present work in progress at the Berlin conference. Information on PIRC and other aspects of Berlin 2007 will be available on the LSA website later this year.

PC 2007 will meet this summer to draw up detailed plans for the Berlin event. We welcome suggestions from members of RCSL and other scholars world-wide. Questions and suggestions and can be directed to Anne Boigeol boigeol@ihtp.cnrs.fr)

Anne Boigeol and David Trubek

In Memoriam of Per Stjernquist

Per Stjernquist passed away on 27 December 2005, fondly remembered as one of the true pioneers of the sociology of law. Per belonged to the first generation of socio-legal scholars who emerged after WW II and soon became an admired mentor for the second generation of sociologists of law, mainly in the Nordic countries but also internationally. Deeply rooted in the Swedish social democratic culture, he remained mainly concerned with promoting the sociology of law in the Nordic countries rather than establishing an international reputation. Nevertheless many international scholars were attracted by the practical sociology of law of Per Stjernquist and his quiet way of insisting that the sociology of law was, above all, cared for people and their interests. As one of those who was guided by Per's friendly advice and firm criticism over the past thirty two years, I would like to draw the attention of the wider international community to the pioneering work of Per Stjernquist by referring to the obituary which was published by the colleagues in the Department of Sociology of Law in Lund, Sweden, Prof. Håkan Hydén, the successor of Per Stjernquist in the Chair of Sociology of Law, and Marianne Steneroth Sillén, Associate Dean in Commercial Law in Lund:

"Neither law nor morals are terms which are given to us by birth or nature. These terms are always connected to those who are in power or to the interests of the various groups in society. If one wants to decide what is right and what is unjust one can only go by one's own reasoning."

This statement was made by per Stjernquist in an interview on law and morals. He became a famous celebrity in Lund as a law professor with a fighting spirit for whom the faculty of law had become too stifling. He left law and introduced sociology of law as a subject in the faculty of social sciences in 1963. This was a great relief for many students who studied law in the shadow of 1968 when the political bias of law and dependency on external conditions became only too obvious. Per Stjernquist's engaging lectures and publications attained an enormous significance for all of us because they gave life and meaning to studying law.

During all his life he had a strong and manifest interest for forests and nature, and this formed his life to a high degree. He formulated this interest already in 1961 with his classical textbook on private law *Den rättsliga kontrollen över mark och vatten* (The Legal Control over land and water), but also later in his leading socio-legal opus magnum *Laws in the forests - study of public direction of Swedish private forestry* which was first published in 1973, one year after Per Stjernquist was appointed as the first Professor of Sociology of Law at the University of Lund.

Per Stjernquist's publications are spread over the most diverse range, beginning with *Rättens ursprung och grund* (The Origin and Foundation of Law, 1961), *Rätten i samhällsbyggandet* (Law in Forming Society,1980), the anthropologically oriented *Folket i trähusen* (People in the Wooden Houses, 1986) to *Skogen och brukarna : skogens behandling i enskilt skogsbruk* (The Forests and Owners of Forests: the Treatment of Forests in Private Forestry, 1997).

Per Stjernquist continued with his academic activities also long after retirement from university service. As late as 2000 he published Organized *Cooperation Facing Law – an anthropological study*, and in 2001 together with Per Jarlbro *Kulturmiljövård och samhällsplanering – en fallstudie av Ängö vid Kalmar* (Protection of the Cultural Environment and Social Planning – a Case-study of (the island) Ängö bei Kalmar. Until his death he was an active supervisor of research on the regulation of forrestry. With Per Stjernquist's passing away, a whole era has come to its end. He was, together with Vilhelm Aubert and Torstein Eckhoff in Norway, the pioneer for that important part of law which is covered by sociology of law. It is our obligation to carry on with this legacy.

Håkan Hydén, Marianne Steneroth Sillén, Alex Ziegert (translator)

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What is the Use of Luhmann's Theory? A reply to John Paterson

I fully understand why socio-legal scholars, such as Paterson, want to make autopoietic theory appear useful for law (and so for society). I can appreciate that for them it is inconceivable that a social theory which can be so insightful about the workings of the legal system could ultimately offer nothing of value to those who wish to use it in an instrumental way to make things work better. It flies in the face of a tradition of jurisprudence, political philosophy and socio-legal scholarship which starts with a problem – the premise that "things could be better" - and then sets out, firstly, to identify what has gone wrong and, secondly, to make things work better in future. The legal journals are full of such well-intentioned diagnoses, prognoses and proposed remedies. I have no wish to mock or belittle their efforts or to cast doubts over their sincerely held beliefs about justice, efficiency, equality, children's interests or the good of society or the planet. My problem is with those who attempt to co-opt autopoietic theory into this enterprise in the mistaken belief that they are doing society and the theory a huge favour, when in fact the opposite is the case. The only sure consequence of using the theory in this instrumental way is that the theory becomes diminished. While they may believe that they are applying a theory of closed systems of communication to solve problems involving the legal system and other systems in its environment, what emerges invariably is a personification of law, a law with human, and possibly also humane, attributes, and not Luhmann's law: that is, a law which can only see only what it can see, only understand what it can understand, only control what it can control, only regulate what it can regulate, all by applying its reductive, astringent, uncompromising code of lawful/unlawful. Inevitably and ironically, in promoting the theory as a new asset for the advance of legal thought and legal action they are trying to make law do just what the theory says it cannot do – control other systems. They are also helping to contribute to the dedifferentiation of law and so of other social systems, which Luhmann, in his one clear normative statement, identifies as the greatest threat to modern society.[1]

Michael King
Brunel University, West London

Developments in sociology of law in the Netherlands

Dutch sociology of law includes what in the UK is called 'socio-legal studies'. It is practiced (apart from a few anthropologists and some governmental researchers) largely in law faculties. Its 'golden decade' was roughly the period 1985-1995, when there were full-time chairs at almost all of the nine law faculties; presently that number has dropped – due to university budget-cutting and the retrenchment of law faculties to what they consider their 'core business' - to about half, and in some faculties the subject hardly exists any more. There is a professional association (Association for the Social-Scientific Study of Law – VSR, founded in 1980), which includes legal anthropology and psychology and covers the Flemish-speaking part of Belgium. The association publishes a journal, *Recht der Werkelijkheid* that appears three times a year and is roughly comparable to the *Journal of Law and Society*. It occasionally publishes articles in English, in particular in its annual thematic issue (the most recent English thematic issue was in 2004 and explores the role of lawyers in promoting European legal integration – see Jettinghoff & Schepel 2004).

The members of the association publish on the same broad range of subjects, largely 'socio-legal' in character, that one finds in the *Journal of Law and Society*. Since one can hardly speak of scientific 'development' in connection with work that listens to a different drummer than that of theory, I will confine myself to what can properly be described as sociology of law: empirical theory and the research connected with it. As in other countries, this body of scholarship is for a variety of reasons (among others, the possibilities of funding) much smaller than that in 'socio-legal studies'. Unfortunately, much interesting

[1] M King and C Thornhill *Niklas Luhmann"s Theory of Politics and Law* (Basingstoke, England, Palgrave/Macmillan, 2003) p.225

writing has been published only in Dutch (the references below are limited with a single exception to writing available in English. This limitation entails a certain immodesty, since several areas of Dutch research are largely accessible to non-Dutch readers through my own writings).

Until the 1990s, the most important area of research concerned the distribution of legal services, a subject on which Dutch scholarship was second to none. The most influential study is *The Road to Justice* by Schuyt, Groenendijk and Sloot (see Griffiths 1977). Of later work, that of Klijn is particularly interesting, especially from the point of view of increasing theoretical sophistication, but unfortunately not available in English (Klijn 1996).

Legal pluralism has been a consistent theme in Dutch research over the past quarter of a century. Griffiths (1986a, 2001), F. von Benda-Beckmann (1989) and others have defended the idea at a theoretical level. Dutch legal anthropologists have addressed themselves systematically to the importance of legal pluralism for property relations, social security, litigation, legal effectiveness, etc. (see in particular the writings of F. and K. von Benda-Beckmann, e.g. 1988, 2002; K. von Benda-Beckmann & Strijbosch 1986).

Dutch scholarship has made major contributions to the study of litigation processes ('dispute settlement') both in the form of interesting empirical studies and in the development of theory (e.g. Griffiths 1983, 1986b; K. von Benda-Beckmann 1984; Verkruisen 1993). The functioning of courts has also been an important subject of theory and research, especially among psychologists of law (see e.g. some of the contributions in Van Koppen & Roos 2000).

J. Griffiths,
Groningen

In the 1990's there was a good deal of empirical work on the implementation of law by various sorts of bureaucrats, theoretically derivative from the work of Hawkins in the UK; more recently, the idea of 'communicative legislation' has been explored (e.g. Zeegers et al. 2005) but so far has made little contribution beyond an appealing slogan to the development of empirical theory. At the moment, the most active and interesting theoretical paradigm seems to be that of the 'social working' of law, a bottom-up and non-instrumentalist successor to traditional effectiveness research (see Griffiths 2003; Zeegers et al. 2005). The two most active areas of empirical research within this paradigm concern the regulation of socially-problematic medical behavior (euthanasia, advance directives, etc.) (e.g. Griffiths et al. 1998; Vezzoni 2005) and the working of anti-discrimination law (Havinga 2002). The phenomenon of self-regulation has also received considerable attention (e.g. Griffiths 2000).

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Conferences

Call for contributions
Dutch/Flemish Association for Socio-Legal Studies

The Dutch/Flemish Association for Socio-Legal Studies is planning to publish a special issue of its journal (Recht der Werkelijkheid) in English entitled Comparative Legal Cultures, in 2007. Fred Bruinsma (Utrecht University, the Netherlands) and David Nelken (University of Macerata, Italy, and Cardiff University, UK) are co-editing this special issue. They herewith invite potential contributors to show their interest by mailing an abstract (250 words at maximum) to Fred Bruinsma (f.bruinsma@law.uu.nl) and/or to David Nelken (sen4144@iperbole.bologna.it), before the 1st of June 2006. The editors will let potential contributors know as soon as possible whether they wish them to proceed. This decision will also take into account the need to include an appropriate variety of perspectives and topics."

Congrès de Association française de sociologie

Réseau thématique en formation n° 13 de l'Association française de sociologie : Responsable(s) : Liora Israël (Liora.Israel@ehess.fr), Thierry Delpeuch (delpeuch@gapp.ens-cachan.fr) Descriptif
Le réseau thématique en formation sur la sociologie du droit se propose d'envisager les rapports entre droit et sociologie. La sociologie du droit est en effet divisée en deux branches : la première consiste en un enseignement dans les facultés de droit, visant à apporter un éclairage sur l'effectivité des normes juridiques, sans remettre la lecture doctrinale qui prévaut dans les enseignements principaux. La seconde correspond à un ensemble de domaines sociologiques spécialisés qui, par leur objet, sont amenés à prendre en compte les dispositifs juridiques. Un premierobjectif de ce réseau consisterait à fédérer et regrouper les sociologues et les juristes relevant de ces domaines de spécialisation. Un second objectif serait de croiser ces deux traditions sous l'angle des objets, des conceptions théoriques du droit et des méthodes d'investigation empirique. L'enjeu serait de revenir sur une interrogation fondatrice, pour la sociologie, sur les usages sociaux du droit impliquant de saisir le droit à partir de ses produits (les dispositifs juridiques), de ses producteurs et de ses usagers. Un troisième objectif viserait à s'interroger sur les apports du droit à une sociologie générale, en partant de la dimension symbolique des dispositifs juridiques pour une connaissance de la vie sociale et en revenant ainsi aux pères fondateurs de la discipline qui, tels Durkheim et Weber, n'envisageaient pas la sociologie sans le droit.

First British-German Socio-Legal Workshop: Law, Politics and Justice
9-11 November 2006

The Research Institute for Law, Politics and Justice (RILPJ) at Keele University, in collaboration with the Research Committee of Socio-Legal Studies of the German Society of Sociology and the German Socio-Legal Association, invites socio-legal scholars from Britain and Germany to present papers and discuss research at the First British-German Socio-Legal Workshop.

We envision streams and discussion groups under the following broad topic areas, but will in addition provide an open forum for papers which do not fall into these themes:

- **Regulating in transnational domains**
- **The bodies of law and politics**
- **Difference and social justice**
- **Environment and technologies**
- **Mediating politics and law**
- **Justice and human rights**

More information at http://www.keele.ac.uk/research.htm send your expressions of interest and if possible an abstract (max. 250 words) to the organisers Professor Susanne Karstedt at s.karstedt@keele.ac.uk and Dr. Bettina Lange at b.lange@law.keele.ac.uk.

International Sociological Association World Congress, Durban, South Africa, 2006

To deal with the past human rights violations committed by the totalitarian, dictatorial and rascist regimes is an important task for societies building a new, democratic order.

Session One: Democracy and Transitional Justice"
Chair: Mahmood Mamdani, Columbia University, USA
Session Two: „Beyond the Rule of Law"
Chair: Grażyna Skąpska, Jagiellonian University, Kraków
Session Three: „Social Devastation and Dilemmas of Reconstruction"
Chair: Ari Sitas, University of Durban, South Africa

Book Notes

Matthew Lange and Dietrich Rueschemeyer, eds. STATES AND DEVELOPMENT: HISTORICAL ANTECEDENTS OF STAGNATION AND ADVANCE. New York: Palgrave Macmillan 2005, paperback $24.95

This volume first explores systematically the ways in which states affect social and economic development. It then looks at long-term effects of states on development, focusing on the age of states as well as different colonial systems in relation to later economic growth. The third section examines the difficulties of state building and raises the question whether state is building inherently a long-term process. The contributors include Bruce Cumings, Peter Evans, Thomas Ertman, Jack Goldstone, James Mahoney, and Louis Putterman.

Miguel Glatzer and Dietrich Rueschemeyer, eds, GLOBALIZATION AND THE FUTURE OF THE WELFARE STATE. Pittsburgh University Press 2005, paperback $29.95

This volume examines the effects of globalization on social policy through a cross-regional comparison of middle-income countries. Middle-income countries have levels of GDP/capita that make welfare policies possible, and they are candidates for inclusion in the global economy. The Northwestern European welfare states established the analytic baselines for the study. The results contradict the assumption that globalization always works against welfare states. Rather, politics matters, especially the balance of power in society, the capacity for effective state action, and the legacies of earlier policies. The contributors include Linda Cook, Geoffrey Garrett, Martine Haas, Kyung Zoon Hong, Evelyne Hyber,Mitchell Orenstein, Ho Keun Song, and John Stephens.

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